

COMMONWEALTH OF MASSACHUSETTS

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MIDDLESEX, SS.

SUPERIOR COURT
CASE NO.: 04-04250-J

05-cv-10222

BERNARD MACINNIS, Administrator of)
the ESTATE OF CHRISTOPHER MACINNIS)
Plaintiff)

U.S. DISTRICT COURT
DISTRICT OF MASS.

v.)

WALSH BROTHERS, INC., MCNAMARA/)
SALVIA, INC. and)
OCEAN STEEL & CONSTRUCTION, INC.)
Defendants)

**ANSWER OF THE DEFENDANT, WALSH BROTHERS, INC., TO THE
COMPLAINT OF THE PLAINTIFF, BERNARD MACINNIS, ADMINISTRATOR
OF THE ESTATE OF CHRISTOPHER MACINNIS**

FIRST DEFENSE

The Defendant, Walsh Brothers, Inc., answers the separately numbered paragraphs of the Complaint as follows:

PARTIES

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

2. The defendant denies the allegations contained in this paragraph.

3. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

4. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the

extent that they do state a claim against the defendant, they are hereby expressly denied.

5. The defendant denies the allegations contained in this paragraph.

6. The defendant denies the allegations contained in this paragraph.

7. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

8. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

9. The defendant denies the allegations contained in this paragraph.

10. The defendant denies the allegations contained in this paragraph.

FIRST CAUSE OF ACTION

11. The defendant denies the allegations contained in this paragraph.

SECOND CAUSE OF ACTION

12. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the

extent that they do state a claim against the defendant, they are hereby expressly denied.

THIRD CAUSE OF ACTION

13. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

FOURTH CAUSE OF ACTION

14. The defendant denies the allegations contained in this paragraph.

FIFTH CAUSE OF ACTION

15. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

SIXTH CAUSE OF ACTION

16. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

DEMANDS FOR RELIEF

17. The defendant denies the allegations contained in this paragraph.

18. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

19. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

20. The defendant denies the allegations contained in this paragraph.

21. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

22. The defendant makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Walsh Brothers, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

SECOND DEFENSE

This action is barred by operation of the applicable statute of limitations.

THIRD DEFENSE

This action is barred by the statute of repose, G.L. c. 260, sec. 2B.

FOURTH DEFENSE

The plaintiff was more than 50% at fault in causing the alleged injuries and, therefore, is barred from recovery by the comparative negligence statute, G.L. c. 231, sec. 85.

FIFTH DEFENSE

If the plaintiff is entitled to recover against the defendant, any such recovery must be reduced in accordance with the comparative negligence statute, G.L. c. 231, sec. 85, since the negligence of the plaintiff, Christopher MacInnis, was the proximate cause of the injuries allegedly sustained.

SIXTH DEFENSE

The plaintiff has failed to mitigate, minimize or avoid damages, if any, alleged in the plaintiff's Complaint; accordingly, any recovery must be reduced by the amount of damage resulting from such failure.

SEVENTH DEFENSE

The acts or omissions which are alleged to have caused the damages and/or injuries referred to in the Complaint were committed by a third party who was not an agent or employee of the defendant and for whose acts or omissions the defendant is not legally responsible.

EIGHTH DEFENSE

The Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(4) for insufficiency of process.

NINTH DEFENSE

The Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(5) for insufficiency of service of process.

TENTH DEFENSE

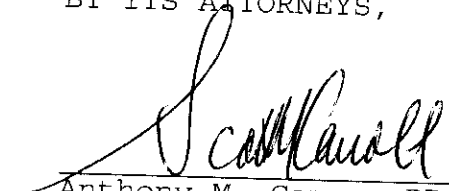
The Complaint fails to state a claim against the defendant upon which relief can be granted and, therefore, the Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(6).

THE DEFENDANT DEMANDS A TRIAL BY JURY.

WHEREFORE, the Defendant demands that this action be dismissed and that judgment enter in the Defendant's favor together with costs.

THE DEFENDANT,
WALSH BROTHERS, INC.,
BY ITS ATTORNEYS,

Date: 2/2/05



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